**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ Petition No. 1950 of 2001 (S/S)**
**(Old No. 13889/1999)**

Dham Singh Baghari
S/o Shri Gaje Singh Baghari
At present working as Clerk in the sub treasury
Bageshwar ..... Petitioner

**Versus**

1. State of U.P. through the Director Treasury Uttar Pradesh.
2. Joint Director Treasury Kumaun Mandal, Haldwani Nainital.
3. Commissioner, Kumaun Mandal Nainital.
4. District Magistrate, Almora
5. Varishtha Koshadikari, Almora
6. Up Koshadhikari, Bageshwar. ...Respondents.

Sri. M. C. Kandpal, learned counsel for the petitioner.
Learned Standing Counsel for the State.

**Hon'ble Prafulla C.Pant, J.**

Heard learned counsel for the petitioner and learned Standing Counsel.

2. By means of this writ petition, moved under Article 226 of Constitution of India, the order- dated 16.03.1999 (copy Annexure-3) has been challenged, whereby the petitioner was reverted from Group C to Group D post canceling his promotion.

3. The petitioner was Class IV employee in the government treasury District Almora, since 1990. annexure-1 is the order of his appointment. Vide order dated 10.08.1998 (Annexure-1 to the writ petition), the

petitioner was promoted from the post of Group D to the post of Group C purported to be in pursuance of Government Order No. 37/1-1-19-69, dated 31.08.1993 read with Government Order No. 2/37/1-1969.

4. Admittedly, there is no charge of misconduct against the petitioner. The ground on which the petitioner is reverted, mentioned in the impugned order (Annexure-3) is that he was being reverted in pursuance of the order dated 08.01.1999 and order dated 08.02.1999, passed by respondents No. 2 and 3. In para-5 of the counter affidavit, it has been stated that though said letters, respondent No. 4 pointed out that the appointments are against the provisions of certain Government Orders. On perusal of Annexure-C.A. 2 and C.A. 3 to the counter affidavit, it appears that the promotion from the Group D post were to be made in Group C only to the extent of 15% of the post and the promotion of the petitioner has been made in excess of said quota.

5. Learned counsel for the petitioner has pointed out that in the year 1998, District Bageshwar was created and the treasury was also separated. The petitioner was posted in District Bageshwar and there he is the lone employee out of the eleven, who is promotee from the Group D post as such his appointment is not in excess of the quota. In this connection, it is further argued that the District Magistrate, Almora has no power to revert the petitioner as after the creation of the new district Bageshwar, appointing authority of the petitioner became District Magistrate, Bageshwar. Para-9 of the rejoinder affidavit filed by the

petitioner, shows that the petitioner is the only Clerk out of the 11 posts and Class 3 in the treasury of District Bageshwar. In the supplementary counter affidavit filed on behalf of the respondent No. 5, the said fact has not been denied. Though it has been stated that on the date when the impugned order was passed, the District Magistrate, Almora had the jurisdiction to pass the impugned order. But simultaneously, it has been stated that 'now the petitioner is working in the treasury Bageshwar, so the petitioner may approach the District Magistrate, Bageshwar'.

6. No show cause notice appears to have been issued to the petitioner before passing impugned order.

7. A such from the affidavit, counter affidavits and annexure filed therewith, it is clear that the principle of natural justice was not followed before the order of reversion was passed against the petitioner as he had no opportunity to place his case before the authority concerned. From the counter affidavit, it is also not clear that if there were four persons already working against two posts then why not the another person who was in excess not reverted.

7. In the circumstances, the writ petition deserves to be allowed. The writ petition is allowed. The impugned order is quashed.

**(Prafulla C. Pant, J.)**

Dt: 21st of April, 2006
Sweta